

Statement in Opposition to HB 4169 – February 17, 2015

Submitted by Bruce A. Timmons

HB 4169, like its predecessor 2014 HB 5582, would eliminate one of 3 optional dispositions for young offenders – now between age 17 and age 21, proposed to go up to age 24 under HB 4069 – under the Holmes Youthful Trainee Act (**HYTA**): Commitment to the Michigan Department of Corrections (MDOC) for up to 3 years.

Currently the court has 3 options under MCL 762.13(1):

(b) Place the individual on **probation** for not more than 3 years subject to probation conditions as provided in section 3 of chapter XI. ... (including drug court). This option may be straight probation with conditions or may include up to 1 year in jail. This is the most common referral.

(c) Commit the individual to the **county jail** for not more than 1 year. This option if used does not include probation or supervision after release. The court may allow work or school release.

(a) Commit the individual to the department of corrections for custodial supervision and training for not more than 3 years in an institutional facility designated by the department for that purpose (**prison**). If used, option does not include probation, parole or supervision after release.

Committal to MDOC “for custodial supervision and training” under HYTA has ebbed and flowed over the nearly 50 years that HYTA has existed. About 45 years ago that prison option was challenged and thrown out by a circuit judge, only to have that decision reversed on appeal. The numbers provided by MDOC, separately reported from prisoner counts, typically ranged from under 10 to the 20’s or 30’s, up and down in cycles, for many years.

Recently the number of HYTA trainees sent to MDOC has escalated noticeably. MDOC had over 300 trainees in the Thumb Correctional Facility when HB 5582 was introduced last Spring. MDOC provided me with a chart (that I forwarded to committee policy staff last May) that shows the predominant source of trainees is Wayne County, followed by Macomb, Oakland, and Ingham Counties. Partial year 2013 data put those commitments at 259, 59, 29, and 23 respectively (out of a total of 404). The prison option is not otherwise widely used, but the other 34 HYTA trainees sent to prison in 2013 came from 12 other counties. Same MDOC chart showed that 6 other counties were the source of HYTA prison referrals in 2006 and 2009.

While MDOC’s focus and concern are about Wayne County, there have been 21 other counties in 2006, 2009, and 2013 with cases where the **court concluded that the offense was sufficiently serious that the trainee deserved consequences beyond jail or probation, yet felt the individual was a good prospect not to repeat as an offender.**

Remember that the objective of HYTA is to result in no criminal conviction – no criminal record so that individuals may move on with their lives, to get a job, credit, or housing without the impairment of an adverse criminal background check. That is clearly the motivation behind HB 4069 that is on the same Committee agenda.

MDOC is concerned about raw numbers at the Thumb – and that is a legitimate issue. It has concerns about multiple HYTA orders for some trainees – also a legitimate issue. It has *speculated* as to why – such as putting cost on the state instead of county (jail). But that claim does not make sense in light of MDOC’s own stats, even for Wayne County. There are 16 counties who sent individuals to HYTA prison per MDOC’s data for partial year 2013 and another 6 counties had done so in 2006 or 2009. Most in low numbers – strongly suggesting that the judge did not feel comfortable with a probation or jail option that they used much more extensively for other HYTA trainees: Macomb (5.6%), Oakland (4.1%), and Genesee (3.8%). The overwhelming number got HYTA probation. Even Wayne recorded 1,961 (**88.3%**) HYTA

probation cases during the time judges sent 259 (11.7%) to HYTA prison. We also don't know how many other counties may have selectively used the HYTA prison option in other years.

It seems to be the assumption within MDOC that elimination of the prison option will result in commitments to the county jail instead and 'restore' the expense to counties. That might happen to some degree, but there are countervailing considerations suggesting a very different result.

In Wayne County it is my understanding that HYTA trainees sent to prison receive an 18-month committal, with court review every 6 months. Commitment to jail for up to 1 year does not come with a review, although the statute does allow the court to permit work release or release for educational purposes. However, those who are subject to the HYTA prison option are not likely to be good candidates for a work or school release; otherwise that local jail option would have been the disposition instead. Again, Wayne County put 88.3% of HYTA trainees on probation.

Moreover, please remember that prisons provide better programming and training possibilities than do jails. Jails were always intended for short-term commitments, originally for no more than 6 months. (The period was later extended to 1 year but not so long ago – by the way, shifting state expense to counties.)

These **questions** should be asked and answered before HB 4169 moves: Why do judges use the HYTA prison option? What kinds of cases and crimes underlie HYTA prison referrals? How long are HYTA prison terms? What would judges do if the HYTA prison option is eliminated? If judges do not think an offender is a safe risk for HYTA probation and the jail or probation-with-jail option is not adequate, what would cause them to use either if HB 4169 is enacted? With no HYTA prison option, would judges send the offender to prison for a longer period than they now do under HYTA? Without those answers, HB4169 invites unintended consequences – for potential HYTA trainees, courts, prosecutors, counties, and MDOC as well.

Courts and prosecutors thought those 400-some trainees on the 2013 chart deserved a consequence beyond what a jail stay would provide. **The more likely outcome may be commitment to prison – anyway – with a criminal record as the outcome** (and a longer term) and a barrier to overcome when later seeking employment, housing, or credit. That is a result just the opposite of why HYTA was enacted and why HB 4069 wants to extend its reach.

Over the 45 years I served as staff for the Legislature, there were times legislation seemed to be generated in lieu of direct communications between two or more stakeholders that might have been avoided if those affected simply talked to each other about respective interests and concerns – and in some cases, mutual objectives: Like not having older HYTA trainees mixed with younger HYTA trainees – an observation registered by an assistant prosecutor, not MDOC. There may be other ways to accommodate MDOC concerns without legislation. And while at it, consideration should be given to restricting multiple HYTA orders and providing for a period of supervision after a HYTA prison period ends.

I would encourage the Committee to seek answers to the questions above and to explore the issue further with the involvement of other stakeholders before advancing HB 4169.

Respectfully,

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